R Ramachandran v Koperasi Perumahan Kuala Lumpur

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2–25–111 OF 1999
FAIZA TAMBY CHIK J
19 SEPTEMBER 2000

Administrative Law *— Rules of natural justice — Breach of — Claim for wrongful expulsion from co-operative society membership — Whether respondent had failed to prove that the applicant had acted in contravention of the respondent's by law — Right to be heard — Not given opportunity to be heard by relevant disciplinary authority upon issue of punishment — Whether there was a breach of natural justice*

Civil Procedure *— Appeal to High Court — Appeal from the decision of the co-operative tribunal — What the correct procedure is in filing an appeal from a tribunal's decision to the High Court — Whether leave to appeal required*

The applicant was a member of the respondent and his wife was a tenant of the respondent's flat. The applicant's wife had referred a dispute between herself and the respondent to the Pendaftar Koperasi Negeri, which was eventually settled in December 1998. On 21 May 1998, the respondent's board had made allegations against the applicant that he had contravened by law 22(1)(c) of the respondent's by law based on the applicant's letter dated 5 January 1998. As a result of the allegations of the respondent, on 4 October 1998, an EGM was held resulting the respondent giving the applicant an ultimatum either to apologize within 14 days or failing which he would be expelled. On 7 October 1998, the applicant was informed of his expulsion. The applicant referred the decision of the respondent to the co-operative tribunal, who unanimously rejected the applicant's claim with costs. The applicant appealed against the tribunal's decision. The issues for determination were: (i) what is the correct procedure in filing an appeal from a tribunal's decision to the High Court; (ii) whether the respondent had failed to prove that the applicant had acted in contravention of the respondent's by law; and (iii) whether the respondent failed to follow the rules of natural justice before expelling the applicant.

Held, allowing the applicant's appeal with damages to be assessed:

(1) The correct procedure in the instant appeal is O 55 r 13 of the Rules of High Court 1980 ('RHC'), which shall be by way of an originating motion. Leave of the court is not required as the procedure regarding an originating motion in O 8 r 3 RHC is silent on whether leave is required (see p 181A, F).

(2) The respondent had failed to reply to all the applicant's ground for appeal as stated in the originating motion. The respondent failed to reply that by law 22(1)(c) of the respondent's by laws has

three limbs, the third being 'hereby splitting the members to term cliques'. The respondent had failed to prove that the applicant had formed 'cliques' amongst its members. The word 'clique' as defined in *Webster's College Dictionary* is defined as 'a small or exclusive group of people'. The respondent had only proved that only the applicant's wife had been acting on the applicant's allegation. The onus to prove this charge is on the respondent. The respondent never proved this, and the tribunal ignored this salient and vital fact to the detriment of the applicant. To regard a husband and a wife as a group in the circumstances of the case would be absurd and unjust (see p 183F–I).

(3) The decision was made in the absence of the applicant whilst the entire board members were present. Thereby, the rule of natural justice was violated (see p 183I).

[**Bahasa Malaysia summary**

Pemohon adalah seorang ahli kepada responden dan isteri beliau adalah seorang penyewa kepada rumah pangsa responden. Isteri pemohon telah merujuk satu pertikaian antaranya dengan responden kepada Pendaftar Koperasi Negeri, yang akhirnya telah diselesaikan dalam bulan Disember 1998. Pada 21 Mei 1998, lembaga responden telah membuat dakwaan terhadap pemohon bahawa beliau telah melanggar undang-undang kecil 22(1)(c) undang-undang kecil responden berdasarkan surat pemohon bertarikh 5 Januari 1998. Akibat daripada dakwaan responden, pada 4 Oktober 1998, satu EGM telah diadakan di mana responden telah memberi pemohon kata dua sama ada memohon maaf dalam masa 14 hari ataupun jika gagal beliau akan dipecat. Pada 7 Oktober 1998, pemohon telah dimaklumkan tentang pemecatannya. Pemohon telah merujuk keputusan responden kepada tribunal koperasi, yang dengan sebulat suara telah menolak tuntutan pemohon dengan kos. Pemohon telah merayu terhadap keputusan tribunal tersebut. Persoalan-persolan yang perlu ditentukan adalah: (i) apakah prosedur yang betul di dalam memfailkan satu rayuan daripada satu keputusan tribunal kepada Mahkamah Tinggi; (ii) sama ada responden telah gagal untuk membuktikan bahawa pemohon telah bertindak melanggar undang-undang kecil responden; dan (iii) sama ada responden telah aggal untuk mengikuti peraturan-peraturan keadilan asasi sebelum memecat pemohon.

Diputuskan, membenarkan rayuan pemohon dengan ganti rugi untuk ditaksirkan:

(1) Prosedur yang betul di dalam rayuan ini adalah A 55 k 13 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), yang hendaklah melalui satu usul pemula. Kebenaran mahakmah tidak diperlukan kerana prosedur berhubung satu usul pemula dalam

A 8 k 3 KMT tidak menyebutkan apa-apa sama ada kebenaran diperlukan (lihat ms 181A, F).

(2) Responden telah gagal untuk membalas semua alasan rayuan pemohon sebagaimana yang dinyatakan di dalam usuk pemula. Responden telah gagal untuk menjawab bahawa undang-undang kecil 22(1)(c) kepada undang-undang kecil responden mempunyai tiga cabang, yang ketiganya iaitu 'hereby splitting the members to term cliques'. Responden telah gagal untuk membuktikan bahawa pemohon telah membentuk 'cliques' antara ahli-ahlinya. Perkataan 'clique' sepertimana ditafsirkan di dalam *Webster's College Dictionary* bermaksud 'a small or exclusive group of people'. Responden telah hanya membuktikan bahawa isteri pemohon sahaja yang telah bertindak sebagaimana dakwaan pemohon. Beban membukti tuduhan ini terletak atas responden. Responden tidak membuktikan ini, dan tribunal tidak memperdulikan fakta yang menonjol dan penting ini yang mendatangkan mudarat kepada pemohon. Untuk menganggap seorang suami dan seorang isteri sebagai satu kumpulan di dalam keadaan di dalma kes ini adalah tidak munasabah dan tidak adil (lihat ms 183F–I).

(3) Keputusan tersebut telah dibuat dengan ketiadaan pemohon tatkala kesemua ahli lembaga hadir. Oleh itu, peraturan keadilan asasi telah dicabuli (lihat ms 183I).]

Notes

For cases on rules of natural justice generally, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 557–622.

For cases on appeal to the High Court, see 2(1) *Mallal's Dige*st (4th Ed, 1998 Reissue) paras 424–431.

Cases referred to

Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd [1985] 2 MLJ 359 (refd)

Sundaram v Chew Choo Khoon [1968] 2 MLJ 40 (refd)

Yong Yoke Sung & Ors v Sungei Way Estate [1966] 1 MLJ 175 (refd)

Legislation referred to

Co-operative Societies Act 1993 (Act 502) ss 36, 40(2), 82, 83, (7)

Peraturan-Peraturan Koperasi (Fee) (Pindaan) 1999

Peraturan-Peraturan Tribunal Koperasi 1998

Rules of High Court 1980 O 8 r 3, 53 r 1(1), r 13, (2)

Subordinate Court Rules 1980 O 49

Thayakugan (*Rajadevan & Associates*) for the applicant.

S Ashok Kandiah (*Zahari, Kanapathy & Thulasi*) for the respondent.

Faiza Tamby Chik J. : This is an appeal from the decision of the co-operative tribunal, kes Tribunal T-25-Tahun 2000, delivered on 18 September 2000, where the applicant is dissatisfied with the decision of the co-operative tribunal. Pursuant to s 83(7) Co-operative Societies Act 1993 (Act 502) ('the Act') 'Any party aggrieved by the award of a tribunal may appeal therefore to the High Court in accordance with the provision of the rules of Court applicable therefore'. Which provision of the High Court Rules ought the applicant pursue? A letter from Jabatan Pembangunan Koperasi Malaysia dated 8 June 2000 stated that the co-operative tribunal is subjected to O 49 of the Subordinate Court Rules 1980 ('SCR') and the panel of the co-operative tribunal does not function as 'subordinate court'. The relevant part of the said letter reads:

> 3 Bahagian Tribunal Koperasi tidak menggunapakai O 49 SCR kerana:
> 3.1 panel tribunal koperasi mempunyai bidangkuasa untuk memberi award ke atas permohonan deklarasi (declaratory order) di atas merit sesuatu kes itu, sedangkan hakim mahkamah sesyen tidak mempunyai bidangkuasa sedemikian,
> 3.2 panel tribunal koperasi dianggotai oleh tiga anggota dan keputusan sesuatu kes diberi sama ada sebulat suara atau majority dua lawan satu, sedangkan hakim mahkamah sesyen mendengar kes seorang diri dan mencapai keputusan seorang diri,
> 3.3 panel tribunal koperasi tidak ada bidangkuasa untuk melaksanakan (enforce) award (s 83(6) Akta Koperasi 1993), sedangkan hakim mahkamah sesyen ada bidangkuasa untuk melaksanakan keputusannya,
> 3.4 panel tribunal koperasi tidak ada bidangkuasa untuk mengutip RM100 fee pemfailan rayuan, kerana tidak ada apa-apa peraturan dalam Peraturan-Peraturan Koperasi (Fee) (Pindaan) 1999 yang diwartakan melaui PU(A) 506 bertarikh 23 Disember 1999, untuk menyatakan notis rayuan boleh difailkan melalui bahgaian tribunal koperasi ke Mahkamah Tinggi. Sila lihat peraturan-peraturan tersebut.
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> 4 Sebagai rumusan, berdasarkan di atas, adalah jelas bahawa panel tribunal kopersai tidak sama (not identical) dengan hakim mahkamah sesyen yang terikat dengan semua Aturan dalam SCR. Sebaliknya, panel tribunal koperasi perlu mengambil kira Peraturan-Peraturan Koperasi (Fee) 1999 serta Peraturan-Peraturan (Fee) (Pindaan) 1999, yang terkhusus untuk digunapakai oleh tribunal koperasi. Maka itu tribunal koperasi tidak terikat untuk menggunapakai 100% SCR.
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> 5 Tuan sedia maklum prosedur memfailkan rayuan yang seharusnya diikuti dalam kes ini adalah amat penting, kerana seandainya prosedur yang salah digunakan, pihak lawan boleh membuat bantahan di Mahkamah Tinggi kelak.

The co-operative tribunal is a statory body empowered and embodied pursuant to s 83 of the Act and uses Peraturan-Peraturan Tribunal Koperasi 1998. It is clear from the abovesaid letter that O 49 SCR is not the procedure to use for an appeal from the decision of the co-operative tribunal. It is noted that the applicant's relief is not for the relief of mandamus, prohibition and certiorari, where pursuant to O 53 r 1(1) of the Rules of High Court 1980 ('RHC'), leave of the court is required prior to

making an application for the reliefs of mandamus, prohibition and certiorari. I am of the opinion that the correct procedure in the instant appeal is O 55 r 13 RHC. Order 55 r 13(2) of the RHC states that where under any written law an appeal lies from any decision of any person or body of persons to the High Court, such appeal shall be by way of motion and there is no provision requiring leave of the court. In *Sundaram v Chew Choo Khoon* [1968] 2 MLJ 40, Chang Ming Tat J held:

> (1) the procedure for an appeal from a statutory body to the High Court is laid down in O 59 r 13 of the Rules of the Supreme Court. On the construction of the word 'motion' in r 13(1), such an appeal must be lodged by the originating motion for the following reasons: (i) a statutory body, though vested with judicial powers, is not a subordinate court within the meaning of s 3 of the Courts Ordinance, 1948. An appeal from the decision of such a statutory body is an origination and not a continuation of the judicial process: (ii) the deliberate use of 'motion' in O 59 r 13(1) in contradistinction to 'notice of motion' in the corresponding English rule—O 59 r 38 established that under O 59 r 13(1) of the local Rules of the Supreme Court, an appeal from a statutory body must be lodged by an originating motion.

In *Yong Yoke Sung & Ors v Sungei Way Estate* [1966] 1 MLJ 175 the Federal Court held:

> (1) the appeal to the High Court should in accordance with O 59 r 13 have been brought by way of motion setting out the grounds of appeal supported by affidavit, and if the court so directed at the hearing, by oral evidence, but as leave could have been given in the High court to amend so that the proceedings court would regard the appeal as properly brought and deal with it on its merits.

It is noted that in both of those cases, leave of the court was never required before filing to the notice of originating motion. The procedure regarding originating motion is set out in O 8 r 3 of the RHC, and it is silent on whether leave is required. I therefore conclude that leave of the court is not required in the instant case.

In the instant case, the applicant was a member of the Koperasi Perumahan Kuala Lumpur Bhd ('respondents') and his wife Mrs Aruna Devi was the tenant of the respondent's flat in Jalan Kent, Kuala Lumpur. The applicant's wife had referred a dispute between herself and the respondent to the Pendaftar Koperasi Negeri and claimed damages amounting to RM5,000 for losses suffered as a result of floods which damaged the house, where the applicant and his wife resided. The dispute was referred pursuant to s 82 of the Act (see 'exh C', encl 5). The dispute was eventually settled in December 1998. On 21 May 1998, the respondent's board had made allegations against the applicant (see 'exh RR-1', encl 1). The allegations were that the applicant was found to act in contravention of by law 22(1)(c) of the respondent's by law (exhibit in exh RR-2, p 8 of encl 1) 'making false allegations against the Board or the members or ex-members of the co-operative employees, thereby splitting the members to form cliques'. The said allegation was based on the applicant's letter dated 5 January 1998 (see exh 'RR-3', encl 1), where in

para 3 it states 'I will not allow members of the board to squander members through protracted litigation for small sums.'). As a result of the allegations of the respondent against the applicant, on 4 October 1998, an EGM was held resulting in the respondent giving the applicant an ultimatum either to apologize within fourteen days, or failing which he would be expelled. (Further grounds are stated in paras 9–11 of encl 2). Subsequently, the applicant was expelled, communicated to him by a letter dated 7 October 1998 informing him of his expulsion (see exh 'RR-10' of encl 1). The applicant was dissatisfied with the decision, and then referred the decision of the respondent to the co-operative tribunal pursuant to s 82 of the Act. On 18 September 1999, the co-operative tribunal panel unanimously rejected the applicant's claim with costs. The applicant lodged an appeal, and his grounds of appeal are as follows (see exhs 'RR-3' and 'RR-44' of encl 6):

(1) The co-operative tribunal erred in considering that the respondent failed to prove that the applicant acted in contravention or/against by law 22(1)(c) of the respondent's by law) (see exh 'RR-4 encl 6, p 60 para 14), where the learned tribunal found the words in the applicant's letter dated 5 January 1998 to be defamatory (please refer to exhibit 'RR-3' of encl 1) The respondent failed to prove that the words were defamatory/false against the respondent, and in fact the words were received as advice (see exh H of encl 55, para 6);

(2) The co-operative tribunal erred in law in considering that the applicant breached by law 22(1)(c). The respondent's by law has three limbs, where the third limb states that 'thereby splitting the members to form cliques'. The respondent failed to prove that the applicant had made allegations thereby splitting members of the respondent to form cliques.

(3) The co-operative tribunal had erred in law in considering that the applicant was not present, not given an opportunity to defend or to be heard while the discussion or deliberation to expel him was being made at the EGM on 4 October 1998, whereas the respondent's board members who were the complainants, were present voiced their opinions and voted. The respondent failed to follow the rules of natural justice before expelling the applicant (see exh RR-3, encl 6 and exh 1 encl 5, item 3.13 to 3.20).

(4) The co-operative tribunal erred in law in considering that pursuant to the by laws of the respondent, the EGM had no right to make a decision against a member which was made on 4 October 1998, as it has breached by law 22(4) of the respondent's by law (see exh 'RR-2', encl 1) where by law 22(1) states that 'if any member violates the by laws or commits any of the following acts… shall be considered acting in manner prejudicial to the interests of the koperasi, and may be expelled from membership.' It must be proved that the applicant breached 22(1)(c) first prior to expelling him, which the respondent failed to do. Bye law 2(4) allows the EGM to confirm/set aside or expel a member and does not empower them to make a decision as made on 4 October 1998 by the EGM.

As a result of the hearing before the co-operative tribunal where the applicant represented himself, the applicant was not able to trade in shares for three months and suffered losses amounting to RM10,000 a month (see

exh 'RR-6'). Whilst the hearing was proceeding before the tribunal and prior to that, the applicant sought legal advice, where the cost for such legal advice was RM15,000 (see exh 'RR-5', encl 6).

It is the submission of the respondent that the applicant did not reply to their show cause letter. However, it is noted that it is clearly stated in pp 39–40 of encl 66, where in examination before the co-opeartive tribunal, the chairman of the respondent, Tuan Haji Mohd Ali bin Haji Ahmad, said that 'he did telephone me and did mention the trivial nature of the show cause letter'. Further, during cross examination, Tuan Haji Mohd Ali stated he could not recollect whether it must be 'in writing for the respondent to reply to the show cause letter. It is hereby noted that the words in para 4 of exh 'G' of encl 5, which reads 'will not allow the board to squander members' money through protracted litigation for small sums', was appreciated by the respondent (refer to exh 'RR-2' encl 6 para 3 which states 'The board appreciates your concern in not wanting the membenrs of the board to squander members' money through protracted litigation for small sums'). It is also further noted that subsequently, the board to its convenience, have concluded that the applicant was making 'false and baseless allegations against the board. It must be noted that the applicant however, being the husband of a tenant and master of the household as well as a witness to the damage caused by floods, had enjoined the dispute. Madam Aruna Devi, as an individual member, has a legal right to a remedy as provided for under s 82 of the Act. It must also be noted that the applicant's sentiments, as stated in the correspondence of Mdm Aruna Devi (see para 5(h) exh F of encl 5) was strictly 'hearsay', and it was improper for the respondents to react against the applicant based on that.

It is observed that the panel made its finding that the words 'squander' and 'engineer' were defamatory in reference to dictionary meanings and therefore were prima facie false. However the respondent must prove that the allegations were false. It is noted that the respondent never submitted on defamation, neither did they raise defamation as an issue in the dispute. The respondent had failed to reply to all the applicant's grounds for appeal as stated in originating motion (encl 1) (see exh 1, encl 5 pp 28–30). the respondents failed to reply that by law 22(I)(c) of the respondent's by laws has three limbs, the third being 'hereby splitting the members to term cliques'. The respondent failed to prove that the applicant had formed 'cliques' amongst its members. The word 'clique' as defined in *Webster's College Dictionary* is defined as 'a small or exclusive group of people'. The respondent has only proved that one dissident (if ever there was any) had been acting on the applicant's allegation, namely Mdm Aruna Devi who is the applicant's wife. I think the onus to prove this charge rested on the respondent. The respondent never proved this, and the tribunal ignored this salient and vital fact to the detriment of the applicant. To regard a husband and a wife as a group in the circumstances of the case would be absurd and unjust. Again, the decision was made in the absence of the applicant whilst the entire board members were present. Thereby the rule of natural justice was violated.

Section 40(2) of the Act states that a special general meeting 'shall have all the powers and be subject to the same rules as a general meeting called in accordance with this Act or by laws of the registered society. The by laws are clear that the supreme authority of the general meeting is limited to the extent of the by laws which give them three alternatives, ie confirm, set aside or expel. Section 36 is irrelevant as the by laws have spelt out the procedures for expelling a member. With regard to the 'co-operative principles' raised in the respondent's submission, in carrying out the object of its incorporation, it does include the objective of 'democratic management not to victimize and expel members or take disciplinary action against members whose wives had referred a bona fide dispute for losses suffered to the co-operative tribunal. In *Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd* [1985] 2 MLJ 359 at pp 361–362, the Supreme Court stated:

> In the second place the object of a co-operative society is very narrow and restricted. This is spelt out clearly in section 4 of the Act, which is as follows:
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> 4 (1) Subject to the provisions hereinafter contained a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with limited liability.
>
> (2) For the purpose of this section, 'co-operative principles' includes —
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> (a) voluntary and open membership;
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> (b) democratic management;
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> (c) limited interest on capital;
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> (d) equitable division of profits;
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> (e) promotion of co-operative education; and
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> (f) active co-operation among registered societies.
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> It is clear from this section that a co-operative society must have as its object the promotion of economic interests of its members in accordance with co-operative principles; otherwise it cannot be registered as such.

In the instant case the applicant employed the services of Aru & Co, a firm of Advocates & Solicitors to advice the applicant on the issue of suspending and expelling a member of a Co-operative Society. The invoice from Aru & Co was submitted at the Tribunal as exhibit 'P8' as appearing in p 4 of the nota-nota prosiding. with regard to the loss of earning for three month at RM10,000 per month owing to the time spent with lawyers and at the hearing which caused a nuisance to the character and livelihood of the applicant.

For the above reasons, order in terms of the applicant's application is hereby granted. The senior assistant registrar is to assess the order in terms of (b), (c) and (d).

Applicant's appeal allowed with damages to be assessed.

Reported by Moy Saw Han